

## SENATE BILL NO. 1372

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on/for \_\_\_\_\_)

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Norment)

A BILL to amend and reenact §§ 58.1-301, 58.1-322.03, and 58.1-402 of the Code of Virginia, relating to conformity of the Commonwealth's taxation system with the Internal Revenue Code; Virginia taxable income.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-301, 58.1-322.03, and 58.1-402 of the Code of Virginia are amended and reenacted as follows:**

**§ 58.1-301. Conformity to Internal Revenue Code.**

A. Any term used in this chapter shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required.

B. Any reference in this chapter to the laws of the United States relating to federal income taxes shall mean the provisions of the Internal Revenue Code of 1954, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as they existed on ~~February 9~~ December 31, 2018, except for:

1. The special depreciation allowance for certain property provided for under §§ 168(k), 168(l), 168(m), 1400L, and 1400N of the Internal Revenue Code;
2. The carry-back of certain net operating losses for five years under § 172(b)(1)(H) of the Internal Revenue Code;
3. The original issue discount on applicable high yield discount obligations under § 163(e)(5)(F) of the Internal Revenue Code;

4. The deferral of certain income under § 108(i) of the Internal Revenue Code. For Virginia income tax purposes, income from the discharge of indebtedness in connection with the reacquisition of an "applicable debt instrument" (as defined under § 108(i) of the Internal Revenue Code) reacquired in the taxable year shall be fully included in the taxpayer's Virginia taxable income for the taxable year, unless the taxpayer elects to include such income in the taxpayer's Virginia taxable income ratably over a three-taxable-year period beginning with taxable year 2009 for transactions completed in taxable year 2009, or over a three-taxable-year period beginning with taxable year 2010 for transactions completed in taxable year 2010 on or before April 21, 2010. For purposes of such election, all other provisions of § 108(i) of the Internal Revenue Code shall apply mutatis mutandis. No other deferral shall be allowed for income from the discharge of indebtedness in connection with the reacquisition of an "applicable debt instrument"; and

~~5. The amount of the deduction allowed for domestic production activities pursuant to § 199 of the Internal Revenue Code for taxable years beginning on or after January 1, 2010. For Virginia income tax purposes, two-thirds of the amount deducted pursuant to § 199 of the Internal Revenue Code for federal income tax purposes during the taxable year may be deducted for Virginia income tax purposes for taxable years beginning on and after January 1, 2010. For taxable years beginning on and after January 1, 2013, the entire amount of the deduction allowed for domestic production activities pursuant to § 199 of the Internal Revenue Code may be deducted for Virginia income tax purposes;~~

~~6. The provisions of the Tax Cuts and Jobs Act (the Act) enacted December 22, 2017, as Public Law 115-97, provided, however, that this exception shall not apply to the following:~~

~~a. Treatment of certain individuals performing services in the Sinai Peninsula of Egypt pursuant to § 11026 of the Act;~~

~~b. Relief for 2016 disaster areas pursuant to § 11028 of the Act;~~

~~c. Any other provision of the Act that affects the computation of federal adjusted gross income of individuals or federal taxable income of corporations for taxable years beginning after December 31, 2016, and before January 1, 2018, other than the temporary reduction in the medical expense deduction floor pursuant to § 11027 of the Act; and~~

53 ~~7. The provisions of the Bipartisan Budget Act of 2018 enacted February 9, 2018, as Public Law~~  
54 ~~115-123, that affect any taxable year other than a taxable year beginning after December 31, 2016, and~~  
55 ~~before January 1, 2018.~~

56 5. For taxable years beginning on and after January 1, 2019, the provisions of § 11046 of the  
57 federal Tax Cuts and Jobs Act, P.L. 115-97 (2017), related to the suspension of the overall limitation on  
58 itemized deductions.

59 The Department of Taxation is hereby authorized to develop procedures or guidelines for  
60 implementation of the provisions of this section, which procedures or guidelines shall be exempt from the  
61 provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

62 **§ 58.1-322.03. Virginia taxable income; deductions.**

63 In computing Virginia taxable income pursuant to § 58.1-322, there shall be deducted from  
64 Virginia adjusted gross income as defined in § 58.1-321:

65 1. a. The amount allowable for itemized deductions for federal income tax purposes where the  
66 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the  
67 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on  
68 such federal return and increased by an amount that, when added to the amount deducted under § 170 of  
69 the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes  
70 at a rate of 18 cents per mile; or

71 b. ~~Three thousand dollars for single individuals and \$6,000 for married persons (one-half of such~~  
72 ~~amounts in the case of a married individual filing a separate return), provided~~ Provided that the taxpayer  
73 has not itemized deductions for the taxable year on his federal income tax return: (i) for taxable years  
74 beginning before January 1, 2019, and on and after January 1, 2026, \$3,000 for single individuals and  
75 \$6,000 for married persons (one-half of such amounts in the case of a married individual filing a separate  
76 return) and (ii) for taxable years beginning on and after January 1, 2019, but before January 1, 2026,  
77 \$4,500 for single individuals and \$9,000 for married persons (one-half of such amounts in the case of a  
78 married individual filing a separate return). For purposes of this section, any person who may be claimed

as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of \$930 for each personal exemption allowable to the taxpayer for federal income tax purposes.

b. Each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be entitled to an additional personal exemption in the amount of \$800.

The additional deduction for blind or aged taxpayers allowed under this subdivision shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.

3. A deduction equal to the amount of employment-related expenses upon which the federal credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.

4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in § 63.2-908, provided that the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. a. A deduction in the amount of \$12,000 for individuals born on or before January 1, 1939.

b. A deduction in the amount of \$12,000 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be reduced by \$1 for every \$1 that the taxpayer's adjusted federal adjusted gross income exceeds \$50,000 for single taxpayers or \$75,000 for married taxpayers. For married taxpayers filing separately, the deduction shall be reduced by \$1 for every \$1 that the total combined adjusted federal adjusted gross income of both spouses exceeds \$75,000.

For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal adjusted gross income minus any benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as amended.

104 6. The amount an individual pays as a fee for an initial screening to become a possible bone marrow  
105 donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction  
106 for the payment of such fee on his federal income tax return.

107 7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed  
108 during the taxable year for a prepaid tuition contract or college savings trust account entered into with the  
109 Virginia College Savings Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as provided  
110 in subdivision b, the amount deducted on any individual income tax return in any taxable year shall be  
111 limited to \$4,000 per prepaid tuition contract or college savings trust account. No deduction shall be  
112 allowed pursuant to this subdivision 7 if such payments or contributions are deducted on the purchaser's  
113 or contributor's federal income tax return. If the purchase price or annual contribution to a college savings  
114 trust account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years  
115 until the purchase price or college savings trust contribution has been fully deducted; however, except as  
116 provided in subdivision b, in no event shall the amount deducted in any taxable year exceed \$4,000 per  
117 contract or college savings trust account. Notwithstanding the statute of limitations on assessments  
118 contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year  
119 or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher  
120 education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death,  
121 disability, or receipt of a scholarship. For the purposes of this subdivision, "purchaser" or "contributor"  
122 means the person shown as such on the records of the Virginia College Savings Plan as of December 31  
123 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or college savings  
124 trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition  
125 contract or college savings trust account, including, but not limited to, carryover and recapture of  
126 deductions.

127 b. A purchaser of a prepaid tuition contract or contributor to a college savings trust account who  
128 has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000  
129 per prepaid tuition contract or college savings trust account in any taxable year. Such taxpayer shall be

130 allowed a deduction for the full amount paid for the contract or contributed to a college savings trust  
131 account, less any amounts previously deducted.

132 8. The total amount an individual actually contributed in funds to the Virginia Public School  
133 Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1,  
134 provided that the individual has not claimed a deduction for such amount on his federal income tax return.

135 9. An amount equal to 20 percent of the tuition costs incurred by an individual employed as a  
136 primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1  
137 to attend continuing teacher education courses that are required as a condition of employment; however,  
138 the deduction provided by this subdivision shall be available only if (i) the individual is not reimbursed  
139 for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition  
140 costs on his federal income tax return.

141 10. The amount an individual pays annually in premiums for long-term health care insurance,  
142 provided that the individual has not claimed a deduction for federal income tax purposes, or, for taxable  
143 years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on and  
144 after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the  
145 individual during the taxable year shall be allowed if the individual has claimed a federal income tax  
146 deduction for such taxable year for long-term health care insurance premiums paid by him.

147 11. Contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses,  
148 as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such  
149 payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:

150 a. If the payment is received in installment payments, then the recognized gain may be subtracted  
151 in the taxable year immediately following the year in which the installment payment is received.

152 b. If the payment is received in a single payment, then 10 percent of the recognized gain may be  
153 subtracted in the taxable year immediately following the year in which the single payment is received.  
154 The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

155 12. An amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-  
156 600 et seq.), not to exceed \$500 in each taxable year, in purchasing for his own use the following items of

tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the U.S. Environmental Protection Agency and the U.S. Department of Energy; (ii) any fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than 35 percent, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced oil-fired boiler with a minimum annual fuel-utilization rating of 85; (ix) any advanced oil-fired furnace with a minimum annual fuel-utilization rating of 85; and (x) programmable thermostats.

13. The lesser of \$5,000 or the amount actually paid by a living donor of an organ or other living tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12 months of such donation, provided that the donor has not taken a medical deduction in accordance with the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in the taxable year in which the donation is made or the taxable year in which the 12-month period expires.

14. For taxable years beginning on and after January 1, 2013, the amount an individual age 66 or older with earned income of at least \$20,000 for the year and federal adjusted gross income not in excess of \$30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy covering the individual or (ii) medical or dental insurance for any person for whom individual tax filers may claim a deduction for such premiums under federal income tax laws. As used in this subdivision, "earned income" means the same as that term is defined in § 32(c) of the Internal Revenue Code. The deduction shall not be allowed for any portion of such premiums paid for which the individual has (a) been reimbursed, (b) claimed a deduction for federal income tax purposes, (c) claimed a deduction or subtraction under another provision of this section, or (d) claimed a federal income tax credit or any income tax credit pursuant to this chapter.

15. For taxable years beginning on and after January 1, 2018, 20 percent of business interest disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code. For purposes of this subdivision, "business interest" means the same as that term is defined under § 163(j) of the Internal Revenue Code.

16. For taxable years beginning on and after January 1, 2019, the actual amount of real and personal property taxes imposed by the Commonwealth or any other taxing jurisdiction not otherwise deducted solely on account of the dollar limitation imposed on individual deductions by § 164(b)(6)(B) of the Internal Revenue Code.

**§ 58.1-402. Virginia taxable income.**

A. For purposes of this article, Virginia taxable income for a taxable year means the federal taxable income and any other income taxable to the corporation under federal law for such year of a corporation adjusted as provided in subsections B, C, D, ~~and E~~, and G.

For a regulated investment company and a real estate investment trust, such term means the "investment company taxable income" and "real estate investment trust taxable income," respectively, to which shall be added in each case any amount of capital gains and any other income taxable to the corporation under federal law which shall be further adjusted as provided in subsections B, C, D, ~~and E~~, and G.

B. There shall be added to the extent excluded from federal taxable income:

1. Interest, less related expenses to the extent not deducted in determining federal taxable income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which the Commonwealth is a party;

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. [Repealed.]



210 4. The amount of any net income taxes and other taxes, including franchise and excise taxes, which  
211 are based on, measured by, or computed with reference to net income, imposed by the Commonwealth or  
212 any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

213 5. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

214 6. [Repealed.]

215 7. The amount required to be included in income for the purpose of computing the partial tax on  
216 an accumulation distribution pursuant to § 667 of the Internal Revenue Code;

217 8. a. For taxable years beginning on and after January 1, 2004, the amount of any intangible  
218 expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or  
219 indirectly with one or more direct or indirect transactions with one or more related members to the extent  
220 such expenses and costs were deductible or deducted in computing federal taxable income for Virginia  
221 purposes. This addition shall not be required for any portion of the intangible expenses and costs if one of  
222 the following applies:

223 (1) The corresponding item of income received by the related member is subject to a tax based on  
224 or measured by net income or capital imposed by Virginia, another state, or a foreign government that has  
225 entered into a comprehensive tax treaty with the United States government;

226 (2) The related member derives at least one-third of its gross revenues from the licensing of  
227 intangible property to parties who are not related members, and the transaction giving rise to the expenses  
228 and costs between the corporation and the related member was made at rates and terms comparable to the  
229 rates and terms of agreements that the related member has entered into with parties who are not related  
230 members for the licensing of intangible property; or

231 (3) The corporation can establish to the satisfaction of the Tax Commissioner that the intangible  
232 expenses and costs meet both of the following: (i) the related member during the same taxable year directly  
233 or indirectly paid, accrued or incurred such portion to a person who is not a related member, and (ii) the  
234 transaction giving rise to the intangible expenses and costs between the corporation and the related  
235 member did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.

236           b. A corporation required to add to its federal taxable income intangible expenses and costs  
237 pursuant to subdivision a may petition the Tax Commissioner, after filing the related income tax return  
238 for the taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this  
239 article for such taxable year including tax upon any amount of intangible expenses and costs required to  
240 be added to federal taxable income pursuant to subdivision a, to consider evidence relating to the  
241 transaction or transactions between the corporation and a related member or members that resulted in the  
242 corporation's taxable income being increased, as required under subdivision a, for such intangible  
243 expenses and costs.

244           If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and  
245 convincing evidence, that the transaction or transactions between the corporation and a related member or  
246 members resulting in such increase in taxable income pursuant to subdivision a had a valid business  
247 purpose other than the avoidance or reduction of the tax due under this chapter, the Tax Commissioner  
248 shall permit the corporation to file an amended return. For purposes of such amended return, the  
249 requirements of subdivision a shall not apply to any transaction for which the Tax Commissioner is  
250 satisfied (and has identified) that the transaction had a valid business purpose other than the avoidance or  
251 reduction of the tax due under this chapter. Such amended return shall be filed by the corporation within  
252 one year of the written permission granted by the Tax Commissioner and any refund of the tax imposed  
253 under this article shall include interest at a rate equal to the rate of interest established under § 58.1-15  
254 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such amended  
255 return, any related member of the corporation that subtracted from taxable income amounts received  
256 pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that portion of such  
257 amounts for which the corporation has filed an amended return pursuant to this subdivision. In addition,  
258 for such transactions identified by the Tax Commissioner herein by which he has been satisfied by clear  
259 and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns  
260 for subsequent taxable years to deduct the related intangible expenses and costs without making the  
261 adjustment under subdivision a.

The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of any petition pursuant to this subdivision, to include costs necessary to secure outside experts in evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this subdivision upon payment of such fee.

No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision shall be maintained in any court of this Commonwealth.

c. Nothing in subdivision B 8 shall be construed to limit or negate the Department's authority under § 58.1-446;

9. a. For taxable years beginning on and after January 1, 2004, the amount of any interest expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members to the extent such expenses and costs were deductible or deducted in computing federal taxable income for Virginia purposes. This addition shall not be required for any portion of the interest expenses and costs, if:

(1) The related member has substantial business operations relating to interest-generating activities, in which the related member pays expenses for at least five full-time employees who maintain, manage, defend or are otherwise responsible for operations or administration relating to the interest-generating activities; and

(2) The interest expenses and costs are not directly or indirectly for, related to or in connection with the direct or indirect acquisition, maintenance, management, sale, exchange, or disposition of intangible property; and

(3) The transaction giving rise to the expenses and costs between the corporation and the related member has a valid business purpose other than the avoidance or reduction of taxation and payments between the parties are made at arm's length rates and terms; and

(4) One of the following applies:

(i) The corresponding item of income received by the related member is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government that has entered into a comprehensive tax treaty with the United States government;

289 (ii) Payments arise pursuant to a pre-existing contract entered into when the parties were not related  
290 members provided the payments continue to be made at arm's length rates and terms;

291 (iii) The related member engages in transactions with parties other than related members that  
292 generate revenue in excess of \$2 million annually; or

293 (iv) The transaction giving rise to the interest payments between the corporation and a related  
294 member was done at arm's length rates and terms and meets any of the following: (a) the related member  
295 uses funds that are borrowed from a party other than a related member or that are paid, incurred or passed-  
296 through to a person who is not a related member; (b) the debt is part of a regular and systematic funds  
297 management or portfolio investment activity conducted by the related member, whereby the funds of two  
298 or more related members are aggregated for the purpose of achieving economies of scale, the internal  
299 financing of the active business operations of members, or the benefit of centralized management of funds;  
300 (c) financing the expansion of the business operations; or (d) restructuring the debt of related members,  
301 or the pass-through of acquisition-related indebtedness to related members.

302 b. A corporation required to add to its federal taxable income interest expenses and costs pursuant  
303 to subdivision a may petition the Tax Commissioner, after filing the related income tax return for the  
304 taxable year and remitting to the Tax Commissioner all taxes, penalties, and interest due under this article  
305 for such taxable year including tax upon any amount of interest expenses and costs required to be added  
306 to federal taxable income pursuant to subdivision a, to consider evidence relating to the transaction or  
307 transactions between the corporation and a related member or members that resulted in the corporation's  
308 taxable income being increased, as required under subdivision a, for such interest expenses and costs.

309 If the corporation can demonstrate to the Tax Commissioner's sole satisfaction, by clear and  
310 convincing evidence, that the transaction or transactions between the corporation and a related member or  
311 members resulting in such increase in taxable income pursuant to subdivision a had a valid business  
312 purpose other than the avoidance or reduction of the tax due under this chapter and that the related  
313 payments between the parties were made at arm's length rates and terms, the Tax Commissioner shall  
314 permit the corporation to file an amended return. For purposes of such amended return, the requirements  
315 of subdivision a shall not apply to any transaction for which the Tax Commissioner is satisfied (and has

identified) that the transaction had a valid business purpose other than the avoidance or reduction of the tax due under this chapter and that the related payments between the parties were made at arm's length rates and terms. Such amended return shall be filed by the corporation within one year of the written permission granted by the Tax Commissioner and any refund of the tax imposed under this article shall include interest at a rate equal to the rate of interest established under § 58.1-15 and such interest shall accrue as provided under § 58.1-1833. However, upon the filing of such amended return, any related member of the corporation that subtracted from taxable income amounts received pursuant to subdivision C 21 shall be subject to the tax imposed under this article on that portion of such amounts for which the corporation has filed an amended return pursuant to this subdivision. In addition, for such transactions identified by the Tax Commissioner herein by which he has been satisfied by clear and convincing evidence, the Tax Commissioner may permit the corporation in filing income tax returns for subsequent taxable years to deduct the related interest expenses and costs without making the adjustment under subdivision a.

The Tax Commissioner may charge a fee for all direct and indirect costs relating to the review of any petition pursuant to this subdivision, to include costs necessary to secure outside experts in evaluating the petition. The Tax Commissioner may condition the review of any petition pursuant to this subdivision upon payment of such fee.

No suit for the purpose of contesting any action of the Tax Commissioner under this subdivision shall be maintained in any court of this Commonwealth.

c. Nothing in subdivision B 9 shall be construed to limit or negate the Department's authority under § 58.1-446.

d. For purposes of subdivision B 9:

"Arm's-length rates and terms" means that (i) two or more related members enter into a written agreement for the transaction, (ii) such agreement is of a duration and contains payment terms substantially similar to those that the related member would be able to obtain from an unrelated entity, (iii) the interest is at or below the applicable federal rate compounded annually for debt instruments under § 1274(d) of

the Internal Revenue Code that was in effect at the time of the agreement, and (iv) the borrower or payor adheres to the payment terms of the agreement governing the transaction or any amendments thereto.

"Valid business purpose" means one or more business purposes that alone or in combination constitute the motivation for some business activity or transaction, which activity or transaction improves, apart from tax effects, the economic position of the taxpayer, as further defined by regulation.

10. a. For taxable years beginning on and after January 1, 2009, the amount of dividends deductible under §§ 561 and 857 of the Internal Revenue Code by a Captive Real Estate Investment Trust (REIT). For purposes of this subdivision, a REIT is a Captive REIT if:

- (1) It is not regularly traded on an established securities market;
- (2) More than 50 percent of the voting power or value of beneficial interests or shares of which, at any time during the last half of the taxable year, is owned or controlled, directly or indirectly, by a single entity that is (i) a corporation or an association taxable as a corporation under the Internal Revenue Code; and (ii) not exempt from federal income tax pursuant to § 501(a) of the Internal Revenue Code; and
- (3) More than 25 percent of its income consists of rents from real property as defined in § 856(d) of the Internal Revenue Code.

b. For purposes of applying the ownership test of subdivision 10 a (2), the following entities shall not be considered a corporation or an association taxable as a corporation:

- (1) Any REIT that is not treated as a Captive REIT;
- (2) Any REIT subsidiary under § 856 of the Internal Revenue Code other than a qualified REIT subsidiary of a Captive REIT;
- (3) Any Listed Australian Property Trust, or an entity organized as a trust, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, 75 percent or more of the voting or value of the beneficial interests or shares of such trust; and
- (4) Any Qualified Foreign Entity.

c. For purposes of subdivision B 10, the constructive ownership rules prescribed under § 318(a) of the Internal Revenue Code, as modified by § 856(d)(5) of the Internal Revenue Code, shall apply in determining the ownership of stock, assets, or net profits of any person.

d. For purposes of subdivision B 10:

"Listed Australian Property Trust" means an Australian unit trust registered as a Management Investment Scheme, pursuant to the Australian Corporations Act, in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market.

"Qualified Foreign Entity" means a corporation, trust, association or partnership organized outside the laws of the United States and that satisfies all of the following criteria:

(1) At least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined in § 856(c)(5)(B) of the Internal Revenue Code, thereby including shares or certificates of beneficial interest in any REIT, cash and cash equivalents, and U.S. Government securities;

(2) The entity is not subject to a tax on amounts distributed to its beneficial owners, or is exempt from entity level tax;

(3) The entity distributes, on an annual basis, at least 85 percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest;

(4) The shares or certificates of beneficial interest of such entity are regularly traded on an established securities market or, if not so traded, not more than 10 percent of the voting power or value in such entity is held directly, indirectly, or constructively by a single entity or individual; and

(5) The entity is organized in a country that has a tax treaty with the United States.

e. For taxable years beginning on or after January 1, 2016, for purposes of subdivision B 10, any voting power or value of the beneficial interests or shares in a REIT that is held in a segregated asset account of a life insurance corporation as described in § 817 of the Internal Revenue Code shall not be taken into consideration when determining if such REIT is a Captive REIT.

11. For taxable years beginning on or after January 1, 2016, to the extent that tax credit is allowed for the same donation pursuant to § 58.1-439.12:12, any amount claimed as a federal income tax deduction for such donation under § 170 of the Internal Revenue Code, as amended or renumbered.

395 C. There shall be subtracted to the extent included in and not otherwise subtracted from federal  
396 taxable income:

397 1. Income derived from obligations, or on the sale or exchange of obligations, of the United States  
398 and on obligations or securities of any authority, commission or instrumentality of the United States to  
399 the extent exempt from state income taxes under the laws of the United States including, but not limited  
400 to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes,  
401 interest on equipment purchase contracts, or interest on other normal business transactions.

402 2. Income derived from obligations, or on the sale or exchange of obligations of this  
403 Commonwealth or of any political subdivision or instrumentality of this Commonwealth.

404 3. Dividends upon stock in any domestic international sales corporation, as defined by § 992 of  
405 the Internal Revenue Code, 50 percent or more of the income of which was assessable for the preceding  
406 year, or the last year in which such corporation has income, under the provisions of the income tax laws  
407 of the Commonwealth.

408 4. The amount of any refund or credit for overpayment of income taxes imposed by this  
409 Commonwealth or any other taxing jurisdiction.

410 5. Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue  
411 Code (foreign dividend gross-up).

412 6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not  
413 deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.

414 7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart  
415 F income) or, for taxable years beginning on and after January 1, 2018, § 951A of the Internal Revenue  
416 Code (Global Intangible Low-Taxed Income).

417 8. Any amount included therein which is foreign source income as defined in § 58.1-302.

418 9. [Repealed.]

419 10. The amount of any dividends received from corporations in which the taxpaying corporation  
420 owns 50 percent or more of the voting stock.

421 11. [Repealed.]



12, 13. [Expired.]

14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code.

15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1.

16. For taxable years beginning on or after January 1, 2000, but before January 1, 2015, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

17. For taxable years beginning on and after January 1, 2001, any amount included therein with respect to § 58.1-440.1.

18. For taxable years beginning on and after January 1, 1999, income received as a result of (i) the "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower Settlement Trust dated July 19, 1999, by (a) tobacco farming businesses; (b) any business holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any business having the right to grow tobacco pursuant to such a quota allotment.

19, 20. [Repealed.]

21. For taxable years beginning on and after January 1, 2004, any amount of intangible expenses and costs or interest expenses and costs added to the federal taxable income of a corporation pursuant to subdivision B 8 or B 9 shall be subtracted from the federal taxable income of the related member that received such amount if such related member is subject to Virginia income tax on the same amount.

22. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended

to provide individuals the training or experience of a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.

23. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division of the National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or spaceport in Virginia.

24. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital gain for federal income tax purposes, or any income taxed as investment services partnership interest income (otherwise known as investment partnership carried interest income) for federal income tax purposes. To qualify for a subtraction under this subdivision, such income must be attributable to an investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business approved by the Secretary of Technology, provided the business has its principal office or facility in the Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the investment must be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.

25. a. Income, including investment services partnership interest income (otherwise known as investment partnership carried interest income), attributable to an investment in a Virginia venture capital account. To qualify for a subtraction under this subdivision, the investment shall be made on or after January 1, 2018, but before December 31, 2023. No subtraction shall be allowed under this subdivision for an investment in a company that is owned or operated by an affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has claimed a subtraction under subdivision C 24 for the same investment.

b. As used in this subdivision 25:

476 "Qualified portfolio company" means a company that (i) has its principal place of business in the  
477 Commonwealth; (ii) has a primary purpose of production, sale, research, or development of a product or  
478 service other than the management or investment of capital; and (iii) provides equity in the company to  
479 the Virginia venture capital account in exchange for a capital investment. "Qualified portfolio company"  
480 does not include a company that is an individual or sole proprietorship.

481 "Virginia venture capital account" means an investment fund that has been certified by the  
482 Department as a Virginia venture capital account. In order to be certified as a Virginia venture capital  
483 account, the operator of the investment fund shall register the investment fund with the Department prior  
484 to December 31, 2023, (i) indicating that it intends to invest at least 50 percent of the capital committed  
485 to its fund in qualified portfolio companies and (ii) providing documentation that it employs at least one  
486 investor who has at least four years of professional experience in venture capital investment or  
487 substantially equivalent experience. "Substantially equivalent experience" includes, but is not limited to,  
488 an undergraduate degree from an accredited college or university in economics, finance, or a similar field  
489 of study. The Department may require an investment fund to provide documentation of the investor's  
490 training, education, or experience as deemed necessary by the Department to determine substantial  
491 equivalency. If the Department determines that the investment fund employs at least one investor with the  
492 experience set forth herein, the Department shall certify the investment fund as a Virginia venture capital  
493 account at such time as the investment fund actually invests at least 50 percent of the capital committed  
494 to its fund in qualified portfolio companies.

495 26. a. Income attributable to an investment in a Virginia real estate investment trust. To qualify for  
496 a subtraction under this subdivision, the investment shall be made on or after January 1, 2019, but before  
497 December 31, 2024. No subtraction shall be allowed for an investment in a trust that is managed by an  
498 affiliate of the taxpayer. No subtraction shall be allowed under this subdivision for a taxpayer who has  
499 claimed a subtraction under subdivision C 24 or 25 for the same investment.

500 b. As used in this subdivision 26:

501 "Distressed" means satisfying the criteria applicable to a locality described in subdivision E 2 of §  
502 2.2-115.

503 "Double distressed" means satisfying the criteria applicable to a locality described in subdivision  
504 E 3 of § 2.2-115.

505 "Virginia real estate investment trust" means a real estate investment trust, as defined in 26 U.S.C.  
506 § 856, that has been certified by the Department as a Virginia real estate investment trust. In order to be  
507 certified as a Virginia real estate investment trust, the trustee shall register the trust with the Department  
508 prior to December 31, 2024, indicating that it intends to invest at least 90 percent of trust funds in Virginia  
509 and at least 40 percent of trust funds in real estate in localities that are distressed or double distressed. If  
510 the Department determines that the trust satisfies the preceding criteria, the Department shall certify the  
511 trust as a Virginia real estate investment trust at such time as the trust actually invests at least 90 percent  
512 of trust funds in Virginia and at least 40 percent of trust funds in real estate in localities that are distressed  
513 or double distressed.

514 D. For taxable years beginning on and after January 1, 2006, there shall be subtracted from federal  
515 taxable income contract payments to a producer of quota tobacco or a tobacco quota holder as provided  
516 under the American Jobs Creation Act of 2004 (P.L. 108-357) as follows:

517 1. If the payment is received in installment payments, then the recognized gain, including any gain  
518 recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year in  
519 which the installment payment is received.

520 2. If the payment is received in a single payment, then 10 percent of the recognized gain may be  
521 subtracted in the taxable year immediately following the year in which the single payment is received.  
522 The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

523 E. Adjustments to federal taxable income shall be made to reflect the transitional modifications  
524 provided in § 58.1-315.

525 F. Notwithstanding any other provision of law, the income from any disposition of real property  
526 which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or  
527 business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after January  
528 1, 2009, may, at the election of the taxpayer, be recognized under the installment method described under  
529 § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer disposition of the

property has been made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or conditions established by the Department, which shall be set forth in guidelines developed by the Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of such income under certain circumstances. The development of the guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

G. For taxable years beginning on and after January 1, 2018, there shall be deducted to the extent included in and not otherwise subtracted from federal taxable income 20 percent of business interest disallowed as a deduction pursuant to § 163(j) of the Internal Revenue Code. For purposes of this subsection, "business interest" means the same as that term is defined under § 163(j) of the Internal Revenue Code.

**2. That the provisions of this act amending § 58.1-301 of the Code of Virginia shall be effective only for taxable years beginning on and after January 1, 2018.**

**3. That in addition to any refund due pursuant to § 58.1-309 of the Code of Virginia, and for taxable years beginning on and after January 1, 2018, but before January 1, 2019, an individual filing a final return before July 1, 2019, or married persons filing a final joint return before July 1, 2019, shall be issued a refund out of the state treasury in an amount up to \$110 for an individual, or \$220 for married persons filing a joint return. The Governor, in consultation with the State Comptroller and the Tax Commissioner, shall certify to the General Assembly on or before September 1, 2019, the estimated amount available in the Taxpayer Relief Fund, established pursuant to the fourth enactment of this act, for the issuance of such refunds. If such estimated amount is insufficient to issue refunds of \$110 for an individual, or \$220 for married persons filing a joint return, then such refunds shall be reduced and prorated based on the amount of available funds. An individual shall only be allowed a refund pursuant to this enactment up to the amount of such individual's tax liability after the application of any deductions, subtractions, or credits to which the individual is entitled pursuant to Chapter 3 (§ 58.1-300 et seq.) of Title 58.1 of the Code of Virginia. Married**

persons filing a joint return shall only be allowed a refund pursuant to this enactment up to the amount of such married persons' tax liability after the application of any deductions, subtractions, or credits to which the married persons are entitled pursuant to Chapter 3 of Title 58.1 of the Code of Virginia. Any refund issued pursuant to this enactment shall be subject to collection under the provisions of the Setoff Debt Collection Act, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia. Refunds due pursuant to this enactment shall be issued on or after October 1, 2019, but before October 15, 2019.

4. That any additional revenues generated by the provisions of the federal Tax Cuts and Jobs Act, P.L. 115-97 (2017), from the collection of taxes during Fiscal Years 2019 and 2020, beyond those revenues reasonably expected to be collected absent the federal policy changes, less the estimated reduction in revenues during Fiscal Years 2019 and 2020 pursuant to the first enactment of this act, shall be transferred to a special nonreverting fund hereby established and to be known as the "Taxpayer Relief Fund." Such funds shall be used for the issuance of refunds pursuant to the third enactment of this act. Any additional funds remaining after the issuance of such refunds, and any additional revenues generated by the provisions of the federal Tax Cuts and Jobs Act from the collection of taxes during Fiscal Year 2021 and all subsequent fiscal years shall be transferred to the Revenue Reserve Fund established pursuant to § 2.2-1831.2 of the Code of Virginia.

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